



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10

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OFFICE OF  
WATER AND  
WATERSHEDS

JUN 25 2014

Ms. Wendy Wiles, Division Administrator  
Environmental Solutions  
Oregon Department of Environmental Quality  
811 S.W. Sixth Avenue  
Portland, Oregon 97204-1390

Re: Determination of Progress – Oregon's Nonpoint Source (NPS) Management Program (in 2013)

Dear Ms. Wiles:

Thank you for submitting the Oregon Nonpoint Source Pollution Program 2013 Annual Report (Annual Report), prepared by the Oregon Department of Environmental Quality (ODEQ). Section 319(h)(11) of the Clean Water Act requires States to report annually on progress under their approved NPS Management Programs, including pollutant load reductions and improvements to water quality. The Environmental Protection Agency (EPA) must establish whether the State made "Satisfactory progress" each year implementing its NPS Management Program, prior to awarding Section 319 funds. The Annual Report is a primary means (along with other reporting conducted under the program and the new checklist) by which we make this determination and evaluate performance of the open 319 grants. Based on our review we conclude that Oregon has made satisfactory progress in 2013 under its NPS management program.

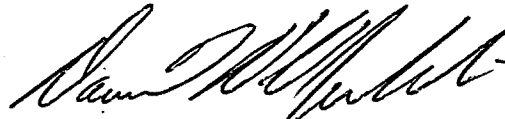
In our enclosed detailed review comments – Review Comments on Oregon's NPS Program Progress in (calendar year) 2013 – we acknowledge both areas of progress and areas for continued emphasis, as pertains to the following: (1) the State's utilization of Section 319 funds; (2) the prioritization and funding of 319 projects through watershed-based planning efforts; (3) the coordination of NPS program activities with various State and federal programs and jurisdictions; (4) the process for achieving full approval of the State Coastal NPS Program; and (5) monitoring, achieving results, and the reporting of water quality improvements and pollutant reductions from NPS projects. We appreciate the continued progress the State made the past year addressing many of these key program issues.

A key EPA management goal stemming from the national NPS program study prepared in 2011 was for 50% of the states to update their NPS management plans by September 30, 2014. The EPA provided updated guidance on the elements of these plans, particularly as pertains to the updating of program goals, priorities, milestones, and cooperating agency involvement. Thank you for submitting a revised Draft Nonpoint Source Management Program Plan. We have also enclosed the Checklist for Determining Progress of State NPS Management Programs in 2012, completed by the EPA, and applicable to this Oregon review. This checklist,

developed under the recommendations of the 2011 national NPS study, is intended to provide a nationally consistent framework for determinations of state progress, and supplements both this letter and the enclosed detailed comments. The new national program guidelines were issued by the EPA on 4/12/13. These newer guidelines apply to this upcoming FY14 funding cycle.

The EPA will continue to work in partnership with Oregon to address NPS water quality issues, including program activities and projects supported directly through EPA Section 319 funding. In particular, we will continue to work together to direct program resources to watershed within which measurable water quality program improvements can be achieved. Thank you again for submitting Oregon's comprehensive 2013 NPS Annual Report. We appreciate all the hard work and dedication by ODEQ and the State to implement the NPS program this past year. Please feel free to contact me at (206) 553-1855 or Martha Turvey, Oregon NPS Coordinator at (206) 553-1354.

Sincerely,



Daniel D. Opalski, Director  
Office of Water and Watersheds

Enclosures: Review comments on Oregon NPS Program Progress in 2013 Checklist for Determining Progress in 2013.

Checklist for Determining Progress of State NPS Management Programs in 2013

Cc: Ivan Camacho, ODEQ  
Eugene Foster, ODEQ  
Donald Yon, ODEQ  
Adam Coutu, ODEQ

## **Review Comments on Oregon's NPS Program Progress in 2013**

### **Utilization of Oregon's Clean Water Act (CWA) Section 319 Funding Allocation**

The Annual Report provides an overview of Oregon's NPS program, which reflects the goals and objectives of the Oregon's NPS Management Plan. Funding provided by EPA to Oregon is split between the Oregon Performance Partnership Grant (PPG) to fund staff supporting the NPS program and a separate 319 grant funding local projects. The total 2013 319 grant was for \$2,058,000. This past year, \$756,508 or 37% was directed to 26 project grants. The remaining 63% was directed to the PPA grant fund to support 9.45 FTE staff positions. The incremental funds were directed in six areas: Best Management Practice (BMP) implementation (14%), Riparian Restoration (44%), TMDL implementation (57.2%), Pesticide Stewardship Program (4%) and Public Outreach (12%), and Water Quality Assessment (26%). The allocation split between incremental and base fund use is not consistent with EPA's guidelines which recommends 80% of incremental spending to restoration projects. The state applied 55%. However, given large reductions in base portion of 319 funding in recent years and the need to support staff and water quality programs, this adjustment is supported by the EPA.

### **Local 319 Project Implementation**

The Annual report describes the process used to evaluate local projects for funding in 2013 under the State geographic and programmatic priorities. The projects include BMP implementation, Pesticide Stewardship, Public Outreach, Riparian Restoration and Water Quality Assessment. The progress of all local 319 funded projects is summarized in the Annual Report.

Due to the State 319 grants being awarded by the EPA yearly, each with multiple year grant periods, a considerable number of individual projects were in progress in 2013; 68 are open, including the 26 funded in 2013. During 2013, the oldest (FY2009) state 319 grant was closed out with no remaining unexpended funds. We appreciate ODEQ's continued successful management and completion of these sub-grant watershed projects within the grant period. We also commend the ODEQ regional offices conducting project oversight and monitoring, and providing local technical assistance.

### **Impaired Waters, TMDLs and Watershed Based Plans**

The Annual Report describes ODEQ's overall water quality program, which has an increased emphasis on the watershed approach. The watershed approach is divided into 17 subprograms that produce basin based assessments that include water quality conditions and recommendations and uses the assessments to work with local stakeholders to find solutions to water quality issues. The two main elements of a watershed approach are a basin status report and a basin action plan. In 2013 DEQ completed three basin status/action plans: North Coast, Deschutes and Rogue Basin. Also, ODEQ nearly completed the Clackamas and Sandy River Basin, South Coast Basin and Powder/Burnt. ODEQ also started work on the Umatilla Basin, Tualatin Subbasin and the Upper Willamette Area Water Quality Status and Action Plans.

The Annual Report describes the areas of focus for development and implementation of TMDLs.

### State Revolving Fund NPS Projects

In 2013 DEQ provided additional Clean Water State Revolving Fund (CWSRF) loans totaling more than \$6 million to two nonpoint source projects: Central Oregon Irrigation District to pipe open canals and to the City of Ashland to restore 8 miles of riparian area within the Bear Creek watershed. The EPA strongly supports the use of available CWSRF financing for NPS pollution control projects.

### Drinking Water Protection and Groundwater Management Areas

NPS pollution also contributes to contamination of groundwater which is the source of 75% of the public's water supply in Oregon. The Annual Report provides a detailed update on ODEQ and other state agency involvement in groundwater protections activities, including source water assessment and linkage analysis, supplying maps, data and scientific information to municipalities and watershed councils; implementing strategies for nitrate reduction in Irrigon's groundwater area, assisting with aquifer protection plans, pesticide collection events, assisting with ODEQ's Harmful Algae Bloom strategy; and responding to the need for grant funds in the Dalles following a fire.

ODEQ has designated three Groundwater Management Areas (GWMAs) to respond to their concern over elevated nitrate in groundwater: the Lower Umatilla Basin, the Northern Malheur County GWMA and the Southern Willamette Valley GWMA. Specific actions are outlined in the Annual Report. Activities to date include education and outreach, monitoring, planning, technical assistance and interagency coordination. The EPA commends ODEQ on the continued progress and good work protecting groundwater resources.

### Coastal Nonpoint Pollution Control Program

Under Section 6217 of the Coastal zone Act Reauthorization Amendments (CZARA) the state is required to develop Coastal Nonpoint Pollution Control Programs (CNPCP) within the coastal zone areas of the state. The State program was conditionally approved by the National Oceanic and Atmospheric Administration (NOAA) and EPA, subject to three outstanding measures pertaining to new development, on-site sewage disposal, and additional forestry management. Pursuant to the subsequent Settlement Agreement, a process and timeline for actions addressing the remaining management measures was initiated in 2010. This includes the development of TMDL Implementation Guidelines. Both NOAA and the EPA reviewed and provided comments on these proposed approaches during 2012.

On December 20, 2013, NOAA and EPA issued a proposed decision to disapprove Oregon's program in the Federal Registrar. The public comment period ended March 20, 2014. Oregon provided comments and updated information during the public comment period. The Annual Report describes the current process and outlines the management measures that have been conditionally approved in Oregon's Coastal Program. Oregon is currently working toward addressing the three remaining management measures including urban runoff from new development and on-site disposal systems management and forestry measures.

### Water Quality Monitoring and Assessment

The Annual Report describes monitoring and assessments conducted throughout the state in support of TMDLs, water quality standards reviews, toxics reduction efforts, groundwater management, the ambient monitoring program, and volunteer efforts. Notably, during 2013 the state collected toxics data

in coastal watersheds and southeast Oregon at 80 coastal locations for a broad sweep of contaminants. Information from this study will be used to develop a long term toxics monitoring network.

The EPA strongly supports ODEQ's efforts in continuing its monitoring program, which is critical to the NPS program.

#### Agricultural Lands and Pesticide Stewardship Partnerships

The Annual Report describes how ODEQ is addressing water quality issues on agricultural lands through coordination with Oregon Department of Agriculture (ODA), the Natural Resources Conservation Service (NRCS), the state Soil and Water Conservation Districts (SWCDs) and other organizations.

Progress under the Pesticide Stewardship Partnership continued in 2013 in Eastern Oregon, specifically in Hood River, Walla Walla River and watersheds in Wasco County. As described in the Annual Report, monitoring shows pesticide levels (diuron and malathion) have been significantly reduced and levels of almost all pesticides in the Hood River Watershed remain below criteria or benchmarks. DEQ also continues to work with partners in the Willamette Valley, Clackamas, Pudding and Yamhill River, and Amazon watersheds, providing technical assistance and monitoring.

DEQ also participated on the Water Quality Pesticide Management Team (WQPMT), an interagency team formed to coordinate and communicate pesticide issues with ODA, DHS, and ODF. The WQPMT operates under a Memorandum of Understanding established in 2009. ODA is the lead coordinating agency under the EPA-ODA Consolidated Pesticide Cooperative. The Annual Report describes the numerous efforts addressed by WQPMT, including evaluating pesticide data, establishing pesticides of concern and of interest, education to pesticide applicators and coordination with PSP and other key stakeholders.

The Annual Report describes the work done with the Conservation Effectiveness Partnership in 2013 (which was started in 2010), between ODEQ, ODA, NRCS and Oregon Water Enhancement Board (OWEB) with the goal of evaluating the effectiveness of funded restoration. Work is reported to continue to finalize reports on two pilot watersheds, the Wilson River in Tillamook Bay and the Wychus Creek along the Upper Deschutes River.

The EPA strongly supports ODEQ's collaborative partnerships and interagency efforts. We recommend that ODEQ continue to identify priorities and opportunities for efficiency. We also encourage the development of success stories through EPA measures SP12 and WQ10 which address NPS pollutants from agricultural lands.

#### Forests and Rangelands

The Annual Report describes efforts to address water quality issues on forests and rangelands. ODEQ continues to participate with the Oregon Department of Forestry (ODF) on the RipStream (Riparian Function and Stream Temperature) project, which is evaluating whether current riparian protections on fish-bearing streams are adequate to meet water quality standards for temperature. The results demonstrate the need for changes in riparian protection rules for private forestlands in Oregon. In 2013 ODEQ accomplished the following: 1) ODF in cooperation with ODEQ conducted a systematic review of the scientific literature around riparian stream protection in forest harvest. ODEQ also analyzed data from the RipStream study to determine what level of riparian protection will be needed in the revised

rules. 2) ODF staff and others, partly funded by 319 grant, conducted a modeling analysis and wrote a manuscript regarding transmission of heat from harvest units through shaded downstream reaches using the RipStream data, which supports the need to protect thermal regimes.

ODEQ also worked on the MidCoast Sediment TMDLs to evaluate the impact of forest practices on sediment regimes and aquatic life during the source assessment.

Coordination also continued between ODEQ and the U.S. Forest Service (USFS) and the Bureau of Land Management (BLM) through the respective MOU's with these agencies on federal lands. In 2013 a draft final of the MOU to meet federal and state water quality rules and regulations between US Dept. of Agriculture and ODEQ was completed. The Annual Report describes BLM's planning activities for Western Oregon forests. In 2012 ODEQ signed an MOU defining the scope of their involvement and participation in reviewing these plans and the work accomplished for 2013 is reported in the Annual Report.

The EPA strongly supports ODEQ's collaborative partnerships with BLM, USFS, and ODF in addressing watershed protection and restoration activities on forested and agricultural lands.

#### Measuring Progress under the NPS Program (Load reductions and Success Stories)

Section 319 of the CWA requires states to report annually on: (1) progress in meeting NPS Program milestones, (2) reductions in NPS loading, and (3) improvements in water quality resulting from NPS program implementation. National NPS program measures were developed under these objectives, including WQ-10 (NPS-impaired waterbodies which are partially or fully restored as documented through Success Stories), WQ-9 (reductions in nitrogen, phosphorus, and sediment from 319 projects through the Grants Reporting and Tracking System (GRTS)), and SP-12 (water quality improvement on a watershed basis). We appreciate the efforts by ODEQ to document improvements to water quality resulting from NPS implementation and 319 funding.

Documentation for partial or full restoration/attainment of water quality standards (WQ-10) is through publication on the EPA's Success Stories website. Oregon has one WQ-10 Success Story for Diamond Lake. Stories which do not yet count toward WQ-10, but do document progress toward attainment of water quality standards, or document ecological restoration, can also be published on that website. Excellent examples of published "progress" success stories for Oregon include the Bear Creek Watershed (phosphorus reductions), published in 2010, and the Tualatin River watershed (phosphorous, Chlorophyll a, pH and bacteria improvements), published in 2011. The Annual Report also highlights ODEQ success stories resulting from restoration actions and BMP's implemented in other watersheds throughout the state. We appreciate the assistance ODEQ provided to develop and highlight these stories. However, we would like to recommend that ODEQ continue its efforts to add to this list of success stories by continuing to coordinate with the NPS, TMDL implementation and listing programs.

Annual nitrogen, phosphorous, and sediment load reductions from 319 projects were modeled and entered into GRTS by ODEQ. The summary for these three pollutant load reductions are summarized in the Annual Report on page 58 in Table 12. We commend ODEQ for continued progress in reporting load reductions by the annual February 15<sup>th</sup> national deadline.

#### Update of Oregon's 2000 Nonpoint Source Management Plan

A primary EPA management goal stemming from the national source program study that EPA prepared for the Office of Management and Budget in 2011 was for 50% of the state NPS management plans (which are outdated) to be updated by the end of FY 2013. EPA received a draft of the revised NPS management Plan and provided comments to ODEQ. We commend ODEQ for this accomplishment.

**Checklist for Determining Progress of State NPS Management Programs in 2013**

**Oregon Department of Environmental Quality (ODEQ)**

**Completed by the US EPA Region 10, May 2014**

**1. Meeting Statutory and Regulatory Requirements and Demonstrating Water Quality Results**

- A. Section 319(h) (8) requires EPA to determine if a state has made satisfactory progress in meeting a schedule of annual milestones to implement its NPS management program.
- i) Does the state's NPS management program include relevant, up-to-date and trackable annual milestones for program implementation? Yes, ODEQ reports up to date milestones in its Annual Report 2013 and clearly outlined by category in Table 1 pages 14-20.
  - ii) If the state does not yet include up-to-date annual milestones in its NPS management program, in what document(s) is this schedule located? N/A
  - iii) Has the state reported its progress in the annual report required under CWA section 319(h)(11) in meeting its milestone(s) for the preceding fiscal year? Yes
  - iv) Has the state demonstrated satisfactory progress in meeting its schedule or milestone(s) for the preceding fiscal year? Briefly elaborate. Yes, the state reported progress in meeting its schedule and milestones as reported in its annual report, the Grants Reporting and Tracking System (GRTS) and the Oregon DEQ/EPA R10 PPA/PPG.

B. Section 319(h)(11) requires each state to report on an annual basis reductions in NPS pollutant loading and improvements in water quality.

- i) For all active projects that have NPS reduction goals for nutrients or sediment, did the state report load reductions (WQ-9) into GRTS during the reporting period after the first year that practices were installed or implemented achieved?

Annual nitrogen, phosphorus and sedimentation-siltation reductions from 319 FY 2013 were modeled and entered into GRTS by ODEQ. Two projects, Little Butte Creek and North Coast were summarized in Table 12 (page 62) in the Annual Report. The load reductions estimates for these two projects for 2013 totaled 517,291 pounds/year for nitrogen, 112,438 pounds/year for phosphorus and 18,005 tons/year for sediments-siltation.

- ii) Has the state reported improvements in water quality that have occurred in the current reporting period resulting from implementation of its NPS management program and/or previous years' section 319(h) grant work plans? (e.g., reporting on SP-12 or other improvements such as shellfish bed and beach openings that have not yet led to attainment of water quality standards)?

ODEQ submitted SP-12 documentation for Klichis River on 4/22/2013, which should be added to the Annual Report.

- iii) Did the state meet its annual commitment/target/goal (if any) under WQ-10 to remove impaired waters from the 303(d) list? Although there is no state-specific target, the Oregon DEQ/EPA PPG includes a commitment to prepare Success Stories documenting either water quality progress or water quality restoration/attainment (WQ-10).



Oregon has one WQ-10 story, Diamond Lake, and two additional 'showing progress' Success Stories for Oregon (Bear Creek Lake and Tualatin River) have been completed and posted on the EPA Success Story website. The state has no new WQ-10 stories.

## **2. Overall GRTS Reporting**

For this question, it is sufficient to report on the results of previously conducted post-award grants monitoring. No additional monitoring may be needed.

- A. To ensure that the state meets the reporting requirements in section 319(h)(11), did the state enter all mandated data elements into GRTS (including geo-locational tags where available) for all applicable projects in the previous section 319 grant award?

Yes

## **3. Focus on Watershed-Based Implementation**

For this question, it is sufficient to document the results of previous findings, if this was determined during the Region's reviews of the state's active grant work plans.

- A. Is the state implementing nine-element watershed-based plans – or approved alternative plans – at required grant expenditure levels in accordance with EPA's guidelines for CWA section 319(h) grants? If not, please explain.

Oregon directs at least 37% of its 319 incremental funds instead of the 80% per EPA guidance. Oregon has been subjected to severe program cuts due to changes in the state budget priorities.

EPA continued to work with Oregon to incorporate the nine key watershed based plan elements into the state TMDL implementation planning process involving the state designated management agencies. EPA Region 10 reviewed and approved all Oregon 319 project workplans.

## **4. Ensuring Fiscal Accountability**

For this section, it is sufficient to briefly report on the results of previously conducted grants management and oversight required of all grants.

A. *Tracking and Reporting.* For all active section 319(h) grants, using existing post-award monitoring or best professional judgment:

- i) Is the state's RFP process efficient and timely for selecting and funding projects within the work plan timeframe?

Yes

- ii) Did the State obligate all of the section 319(h) funds in the previous year's award within one year per current section 319 grant guidelines?

Yes, the current annual report for 2013 covers calendar year 2013. The funds are available as specified in 319(b)(6).

B. *Rate of Expenditures.* For categorical grants, include and examine a summary of expenditures for all open section 319 grant awards listing the following: state; grant #; FY; project period; grant award amount; balance (unliquidated obligation); percent unliquidated obligation. See example below,

which contains information readily available through Compass, EPA's financial data warehouse. This information could also be obtained from other EPA tools such as GRTS or the Post Award Baseline Tracking Tool. Include a state total of grant award amount, balance and percent unliquidated obligation. Please reference the source and date of information used to answer the question below. ("SA" in column 1 of the example below = State Abbreviation.)

<p><i>Note: This analysis is not required for section 319 funds incorporated into a PPG. CWA</i></p> <p><b>Section 319(h) Funds, Rates of Expenditures (Unliquidated Obligations)</b></p> <p><b>Oregon DEQ-CWA 319 Grant Balances (Unliquidated Obligations)</b></p> <p><b>Based on Compass Federal Data Warehouse Online as of May 22, 2014</b></p>					
Grant #	FY	Project Period	Grant Award	Balance (ULO)	% ULO
C900045109	09	05/01/09-12/31/13	\$1,687,109	0	0
C900045110	10	06/01/10-12/31/14	\$1,381,409	\$84,491	6 %
C900045111	11	07/01/11-12/31/14	\$1,111,832	\$214,667	19 %
C900045112	12	06/01/12-12/31/15	\$905,000	\$541,884	59 %
C900045113	13	07/01/13-12/13/17	\$1,260,847	\$735,308	58 %

Relying on best professional judgment, do the figures in the Rate of Expenditures chart substantially match the expected drawdown rates or the negotiated outlay strategy from the associated grant work plan schedules? If not, briefly explain.

Yes

## 5. PPG Considerations

For states that include section 319 funds in Performance Partnership Grants (PPGs), briefly report on the following.

- A. Has the state followed the goals, objectives and measures of the national program guidelines and priorities in implementing its NPS program? If not, did the state negotiate with the EPA region a work plan that differs significantly from the National Program Manager (NPM) guidance? (If yes, the EPA Region was required to consult with the NPS NPM.) Please explain.

Yes, Oregon adequately documented progress made during 2013 in the NPS Annual Report for the portion of 319 funds going into the PPG, including progress under the PPG Priorities and Commitments. The work plan aligns with the NPM.

- B. Using best professional judgment, has the state adequately documented progress consistent with its listed priorities?

Oregon adequately documented progress made during 2013 in the NPS Annual Report on documenting progress on its program priorities including working toward implementation of the watershed approach and incorporating the use of EPA's nine key NPS elements in watershed planning. Details are outlined in Section 3.4 of the Annual Report.

## 6. Identifying and Addressing Performance Issues/Progress Concerns

- A. Considering issues itemized on this checklist, briefly summarize any significant outstanding section 319 grant performance issues or progress concerns, including recommendation(s) for corrective action(s). For states with out-of-date NPS management programs or schedule of milestones, Regions are to ensure that forthcoming section 319 grant awards are contingent on completing updates to these programs or milestones.

To summarize, Oregon was unable to devote 80% of incremental funds to address implementation projects due to budget issues and instead needed to devote more of the funds to support program staff. The reported split of funds was for \$1,301,492 for base funding to support 9.45 FTE (63%) and \$756,508 (37%) for incremental. 2013 Guidance directs that 80% of incremental would be for restoration projects and ODEQ was able to direct 55% towards this end.

Progress with the CZARA is described in the review comments and currently being addressed by ODEQ, EPA and NOAA. ODEQ submitted a revision of the 2000 NPS management plan and priorities and received comments from the EPA. The EPA and ODEQ anticipate that this document will be finalized by September 2014. ODEQ continues to make progress toward leveraging 319 funds with other funding sources toward implementation of watershed-based TMDL plans.

- B. Are there other significant outstanding section 319 grant performance issues or progress concerns that were not identified through this checklist? If so, please describe, including any recommendation(s) for corrective action(s), as may be appropriate.

There are no other significant 319 grant performance issues.